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Counterclaim Plaintiff,
APPLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELAN MICROELECTRONICS
CORPORATION,

Plaintiff and Counterclaim
Defendant,

v.

APPLE INC.,

Defendant and Counterclaim
Plaintiff.

Case No. C-09-01531 RS (PVT)

JOINT CLAIM CONSTRUCTION AND
PREHEARING STATEMENT

Hon. Richard Seeborg

Claim Construction Hearing:
May 12, 2010, 9:30 am

Pursuant to Northern District of California Patent Local Rule 4-3, Elan Microelectronics Corporation (“Elan”) and Apple Inc. (“Apple”) jointly submit this Joint Claim Construction and Prehearing Statement.

I. PROPOSED CLAIM CONSTRUCTIONS AND SUPPORTING EVIDENCE

Pursuant to Patent Local Rule 4-2(c), the parties have met and conferred regarding the submission of this Joint Claim Construction and Prehearing Statement. The proposed constructions and supporting evidence for U.S. Pat. Nos. 5,825,352 (“the ‘352 patent”), 7,274,353 (“the ‘353 patent”), 5,764,218 (“the ‘218 patent”), 7,495,659 (“the ‘659 patent”), and 6,933,929 (“the ‘929 patent”), including agreed constructions, are identified in Exhibits A to E hereto, respectively. As noted in Exhibits A to E, the parties anticipate proffering expert evidence on claim construction. The parties have agreed to exchange expert reports concerning the construction of disputed terms on February 19, 2010.

Pursuant to Patent Local Rule 4-3(c), the parties jointly identify the following terms as most significant to resolution of the case:

1. ‘353 patent: “a first pattern on said panel for representing a mode switch to switch said touchpad between a key mode and a handwriting mode,” “a first pattern on said panel for representing a mode switch to switch said touchpad between a key mode and a mouse mode,” and “a first pattern on said panel for representing a mode switch to switch said touchpad between a mouse mode and a handwriting mode”¹ **(identified by both parties)**
2. ‘353 patent: “a plurality of second patterns on said plurality of regions for operation in said key and handwriting modes,” “a plurality of second patterns on said plurality of regions for operation in said key and mouse modes,” and “a plurality of second patterns on said plurality of regions for operation in said mouse and handwriting modes”² **(identified by both parties)**
3. ‘352 patent: “identify a first maxima in a signal corresponding to a first finger,” “identify a minima the following the first maxima” and “identify a second maxima in a signal corresponding to the second finger following said minima”³ **(identified by Apple)**

¹ The parties contemplate that these terms will be briefed together because the dispute is the same for each of the parallel limitations.

² The parties contemplate that these terms will be briefed together because the dispute is the same for each of the parallel limitations.

³ Apple contemplates that these terms will be briefed together because the dispute is the same for each of the parallel limitations.

4. '352 patent: "identify" (**identified by Apple**)
5. '352 patent: "in response to" (**identified by Apple**)
6. '352 patent: "means for selecting an appropriate control function" (**identified by Apple**)
7. '218 patent: "cursor control operation" (**identified by Elan**)
8. '659 patent: "sensors configured to map the touchpad surface into native sensor coordinates" (**identified by Elan**)
9. '659 patent: "logical device units" (**identified by Elan**)
10. '929 patent: "housing" (**identified by Elan**)

II. CLAIM CONSTRUCTION HEARING AND BRIEFING SCHEDULE

The Court's October 1, 2009 Case Management Scheduling Order sets the following schedule for claim construction:

Completion of Claim Construction Discovery: March 8, 2010

Opening Briefs: March 26, 2010

Responsive Briefs: April 16, 2010

Reply Briefs: April 30, 2010

Tutorial: TBD

Claim Construction Hearing: May 12, 2010

III. REQUEST FOR CONFERENCE TO DISCUSS CLAIM CONSTRUCTION LOGISTICS

Patent Local Rule 2-1 suggests that, in conjunction with the Initial Case Management Conference, the parties discuss with the Court the format for the claim construction hearing. Because there was no Initial Case Management Conference in this case, the parties' respectfully request a conference with the Court to discuss the overall structure and format for claim construction proceedings. Specifically, the parties wish to discuss and obtain the Court's guidance on which and on how many terms the Court would like oral argument at the hearing, especially in view of the fact that there are five patents at issue; whether and in what format expert evidence and/or a tutorial would be most helpful to the Court; and, based on overall scope and format for the proceedings, the appropriate length of the hearing and for the parties' claim

1 construction briefing.

2 Elan estimates that a tutorial will take no more than one hour and that the claim
3 construction hearing should take no more than two hours. Apple estimates that the tutorial will
4 take approximately two hours and that the claim construction hearing should take no more than
5 six hours depending on the scope of terms at issue and to be addressed.

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7 DATED: February 5, 2010

/s/ Sean P. DeBruine
Sean P. DeBruine

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9 **ALSTON & BIRD LLP**
Attorneys For Elan Microelectronics Corporation

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11 DATED: February 5, 2010

/s/ Edward R. Reines
Edward R. Reines

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13 **WEIL, GOTSHAL & MANGES LLP**
Attorneys for Apple Inc.

FILER'S ATTESTATION

I, Edward R. Reines, am the ECF User whose ID and password are being used to file this **JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**. In compliance with General Order 45, paragraph X.B. I hereby attest that Sean DeBruine has concurred in this filing.

By: /s/ Edward R. Reines
Edward R. Reines